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# Towards an adventurous institutional politics: The prefigurative ‘as if’ and the reposing of what’s real

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DOI: 10.1177/0038026120915148

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**Abstract**

Discussion of prefigurative politics typically focuses on the revisioning of means to ends within grass-roots activities taking shape against or apart from the state. This article takes a different approach. Addressing prefiguration through the terms of the ‘as if’, it explores the assertion of counterhegemonic meanings, facts, norms and authority both by and about institutions, including state ones. Through four contentious acts: municipal expressions of international solidarity; legislating new gender categories; role-playing micro-states and new money; and acting like a law reform commission, the article considers what prefiguration, and reading for prefiguration, can contribute to a progressive transformative politics. While rehearsing, anticipating and representing alternatives are important, well-recognised prefigurative attributes, this article also addresses less explored dimensions. Specifically, it considers how institutional prefiguration retroactively constitutes its conditions of legitimacy and authority, its depiction as fiction, the performative constraints it faces from diffuse and unequal circuits of power, and the work done by recognition (and non-recognition) of new facts, rules and norms. Together, these dimensions speak to the complicated and plural character of what is real when institutions are enacted as if they were otherwise. This quality of being both real and not real, in conditions of wider opposition, support and torpidity, constitutes the crux of prefiguration’s efforts and promise.

**Keywords**

gender, institutions, legal activism, prefigurative politics, radical politics

Worldmaking as we know it always starts from worlds already on hand.  
(Goodman, 1978, p. 6)

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What to do with the institutions of the global north has long been a left preoccupation. Should they be demolished, amended, appropriated, or abandoned so new institutions (or anti-institutions) for more progressive living can emerge? This article routes the question of institutional change through prefiguration where, in Luke Yates's (2015, p. 4) words, people 'enact some feature of an "alternative world" in the present, as though it has already been achieved'. Today, prefiguration is mainly associated with grass-roots politics, organising independently of state institutions or against them.<sup>1</sup> Marianne Maeckelberg (2011, pp. 13–14) writes, 'Redesigning power is not a demand one can make from the state. . . . The aim of developing . . . new structures is to slowly make the state and multilateral organizations obsolete.'

Yet, state and other institutions, as socio-political assemblages, should not be discounted when it comes to prefigurative practice (see also Cooper, 2019a). Their social pervasiveness and taken-for-grantedness, their formative and ordering capacity, their power, as well as their plasticity and agency, make them necessary sites for transformative action. But also – in a country such as Britain, the empirical focus of my discussion – these qualities make institutions challenging change-subjects as well (see also Mackay, 2014; Waylen, 2014). Adopting an expansive account of institutions, to take in more than rules (including the tacit 'rules of the game'),<sup>2</sup> I approach institutions as durable, patterned processes and formations, tying together rules, procedures, norms, systems, knowledges, temporalities, spaces, things, moralities and people in ways that are meaningful, forceful and with effects. This does not mean institutions are stable or monolithic (see also Mahoney & Thelen, 2010; Waylen, 2014). They evolve and change; are plural, heterogeneous, and contradictory; and can be counter-cultural and hybrid as work on critical institutionalism also explores (e.g. Cleaver & de Koning, 2015). Yet, despite their variation and contingency, institutions remain important to the extent that patterns, routines and processes – established and recognised by dominant forces, and giving rise to unequal effects – exist. Indeed, it is this very existence which stimulates and provides a target for critical (as well as more hopeful) political engagement.

This article focuses on four different institutions, state, law, money and gender, chosen for their interconnections as well as their differences, and for their capacity to be prefigured in the sense of embodying new, socially preferred norms and values. I discuss prefiguration in more detail below. Moving beyond an incremental stretching or tinkering with present practice, prefiguration aims to bring into being changes that seem right or at least preferable. With its focus on doings and enactments, prefiguration should not be dismissed as escapist pipedreams or fantastic forms of wishful utopianism. Instead, as bold enactments of a revised or alternative reality (that sometimes settles within the world of play and sometimes exceeds it), prefiguration poses challenging and important questions about how enactment and imagining, truth and fiction, calculation and improvisation get rendered one thing or another, how they combine in pursuit of change, and what this combining can accomplish.

To explore this further, I take up one specific version of prefiguration, focused on the 'as if'. The 'as if' has a life outside of the prefigurative (e.g. Vaihinger, 1924; see also Stampfl, 1998).<sup>3</sup> Casting blame on marginalised subjects *as if* they were responsible for societal wrongs and harms is one well-established form, where accusations and claims are made for what they do rather than for their accuracy. But my interest here is in

prefigurative institutional action, where a *preferred* set of conditions, facts, possibilities and norms are enacted (or assumed to be already in place). This form of institutional prefiguration can face rightwards – witnessed in the 1980s prefiguring of the neoliberal state (see Cooper, 2017). My focus here is otherwise: the take-up of institutional prefiguration within progressive social justice politics, while addressing how fraught and contested this nexus can also prove. Four British-based sites anchor the discussion: (1) municipal solidarity with Palestine; (2) legislative take-up of ‘new’ gendered identities;<sup>4</sup> (3) grass-roots re-enactment of statehood and money; and (4) a university research project’s prefiguring of a legal agenda. Through these sites, I explore different kinds of ‘as if’, including those with a retrospective orientation: acting as if the legal and political conditions necessary were already in place; and those that face forward, where bodies act as if they have the performative force that they need. Thus, we might distinguish between conditions of authorisation and conditions of accomplishment, even as, in practice, they are not that easily separated.

Exploring different registers and dimensions of institutional prefiguration sheds light on what prefiguration does – what it brings, and fails to bring, into being – in contexts where actors may (or may not) interpret their actions in these terms. Reading for the prefigurative ‘as if’ also means tracing how actions get recognised as fictive or real. While the former may be an accusation made by others, it can also function as a protective strategy, carving out an insulated space for initiatives that might seem threatening if assumed to be seriously real. Such attempts are not always successful, and conflict over the ontological status of prefigurative action confronts many initiatives as I discuss. Institutional prefiguration is subject to different perspectives and beliefs about what is taking place. But what also emerges in discussing the prefigurative ‘as if’ are the different, often competing, realities actually taking place (Bottici, 2014; Law & Urry, 2004). This presence as both real and not real constitutes the heart of prefiguration’s efforts and promise.

## From reassembling means and ends to the ‘as if’

Conventional left politics typically distinguishes between means and ends. Good ends justify dubious means, and means are simply that – strategic ways of changing how power is organised, and who controls it, where power is something that can be seized, turned and converted to emancipatory ends. Prefigurative politics, in its common formulation, rejects this approach. It rejects the notion that cruel or authoritarian measures can bring forth a democratic and kind society. And it rejects the notion of power as a thing or quantum that can be seized and redirected.

Today, a vibrant literature exists on prefigurative politics: from the prefigurative aspects of camp and square protest politics (e.g. Van der Sande, 2013), and anti-austerity, pro-migrant activism (e.g. see Mensink, 2019); to writing on anarchist social centres, alternative environmental, gardening and food initiatives, peace politics, children’s play, intentional communities and everyday utopias (Carroll et al., 2019; Cooper, 2014; Fois, 2019; Moore et al., 2014; Silver, 2018; Thaler, 2019; Thorpe, 2018). But prefiguration is not only about grass-roots practice. While little attended-to within the literature, public bodies can also engage in prefiguration, practising alternative forms of government and

welfare in the political meanings, principles and forms of authority they enact. Demonstrating ‘what could be’ through the measures they introduce, progressive actors seek to cultivate a desire for change across institutional scales. David Blunkett, council leader of the northern UK city Sheffield in the 1980s, for instance, described municipal radicalism as a rehearsal: showcasing, in his words: ‘what we could do as a Socialist government at national level’ (quoted in Gyford et al., 1989, p. 329).

But in rehearsing the future or getting the ‘means right’, prefigurative emphases and orientations vary. One approach focuses on the anticipatory enactment of good ends or shared commitments (e.g. Ishkanian & Peña Saavedra, 2019): living communally or more ecologically, refusing to adhere to gender roles, practising leaderless governance or representing a nation as existing before it juridically does, for instance. Dan Swain (2019, p. 55) describes such ‘ends-guided’ prefiguration as ‘concerned with specifying the future in order to live up to it’ (see also Boggs, 1977). A different prefigurative emphasis suggests that, since all actions inevitably shape the futures they give rise to, ends are not detached from means, and good ends cannot be produced from bad means. Dan Swain (2019, p. 55) refers to ‘ends-effacing’ prefiguration, which ‘collapse[s] the future into the present, rather than holding them apart’. If the means determine the ends – indeed, if there are no ends but just further means – how politics is done becomes important, and so foregrounding horizontal, inclusive, participatory and consensual decision-making methods comes to sit at the heart of prefigurative concern. A third prefigurative approach emphasises constant revaluation and experimentation in relation to both means and ends. Van de Sande (2013, p. 232) refers to ‘an inherently experimental and experiential practice’ where ‘both the envisioned ends and means of prefigurative practice are continuously subjected to evaluation and reformulation’. Finally, a fourth rejects the notion of ‘future’ ends, with its depiction of a time to come that can be meaningfully planned for and rehearsed, in favour of an uncertain insurgent now.

In practice, these different prefigurative emphases and orientations often combine. However, the relationship of means to ends, as a relationship to invert, implode, or reinvent, dominates discussion. But there is another way of approaching prefiguration. This backgrounds the temporal relationship of means to ends to focus instead on the relationship between the real and the ‘as if’ (see also Thaler, 2019). Sometimes this assumes a playful register, as in the founding of a new fictive micro-state. Other times, it takes a more serious form – the political authority local government asserts in undertaking international affairs.<sup>5</sup> Yet, whether done playfully or seriously (and of course these two are not easily distinguished as I discuss), the ‘as if’ quality of institutional prefiguration typically remains unannounced. Unlike prefigurative registers which *explicitly* foreground the relationship between means and ends, here the effectiveness of what is done (or the worldmaking it is part of) may depend on obscuring its ‘as if’ character. Yet, the ‘as if’ is important. When overtly aligned with play, it allows actions to happen – crowd-sourcing a people’s constitution,<sup>6</sup> for example – that might otherwise struggle for lack of official propriety and formal legitimacy. More generally, acting ‘as if’ gives political action a boost. This is partly because innovative, utopian or provocative actions happen despite lacking the institutional conditions they seem to require. But it is also because actions reimagine their conditions of possibility, *and act as if they were already there*. Prefigurative action entails a significant reimagining of the environment in which action

is set so that a social, scientific, ethical and political ‘otherwise’ justifies, validates, normalises and holds up the actions undertaken. Yet, as I discuss, such a reimagined environment can also prove shaky and be, at times, sharply contested. This article therefore explores the possibilities, but also the limits, of acting as if things were otherwise; to consider what it does and does not bring into being; and how it both unsettles and reconsolidates accounts of political reality.

It is easy for a discussion of the ‘as if’ to slip into confirming the real: as something distinctively different, and something which remains distinctively different, from the wishful prefigurative enactments taking place. In this article’s examples, the ‘as if’ relies on a sense of something missing – where acting ‘as if’ has this identity because formal authority, official recognition, scientific credibility, or social take-up are absent or because the ‘as if’ operates in a zone of uncertainty between established or emerging truths.<sup>7</sup> However, lack of factual or normative authority is not necessarily constant or permanent. It can diminish over time; and indeed, this diminishment is part of what prefigurative action can accomplish. In her discussion of legal statuses derived from acting ‘as if’, Jessica Clarke (2005) explores how behaving *like* an owner or parent may *create* legal rights despite a lack of formalities or biological ties, respectively. In this article, acting ‘as if’ can sometimes bring into being the missing elements of authority, recognition, science or entitlement required to make an enactment ‘real’ – at least for certain normative communities.<sup>8</sup> However, as Clarke (2005, p. 564) discusses, when this does not happen, and the ‘as if’ works to accentuate instead the presence of a distinct and separate (legal) reality, the consequences can prove severe. In her examples, ownership becomes theft, and parenthood becomes abduction. In my discussed acts, responsible government becomes illegitimate overreach, and law becomes ridicule. But, as I explore, recognition as real can also have its problems.

## Four prefigurative acts

### *Acting as if local government had the authority to advance an international agenda*

Prefiguration usually focuses on what is *done*: from developing hyper-democratic forms of protest to living one’s gender or relationship with the environment differently. But what is practised is more than life’s material side. Prefiguration can also relate to meaning – not as a disembodied abstract affair, but in the meanings taken up, expressed and enacted.<sup>9</sup> When meaning is enacted in prefigurative ways, prevailing accounts and understandings are shed in favour of preferred ones; and while these can be critical (as when the left condemns an otherwise valorised part of mainstream life), my focus is on meanings that invest a form, typically rejected by the left, with hopeful possibility.

Take the state. Left-wing scholarship typically treats the state as an oppressive, coercive institution that supports dominant power relations, most notably capitalism (Jessop, 1990, 2002). For anarchists, especially, the state is oppressive by definition (see Newman, 2001; also Kinna, 2020; Springer, 2012). Here, oppression is not a problem of specific state forms, of authoritarian states as opposed to democratic states, but is inherent to the very notion of the state itself. But if states can be imagined in quite

different ways, what might progressive forms of imagining entail? Can we think of states as democratically embedded governance formations that promote social justice, and that take shape as local, micro and global states as well as national ones,<sup>10</sup> where the nation-state is no longer the primary model for being a state? While this may seem an aspiration to mobilise politically around, approaching it prefiguratively suggests it is a meaning that can be practised and have effects. Several scholars have explored the difference that different state imaginaries make to politics, studying how groups and individuals act differently thanks to the ways they understand the state (Gill, 2010; Navaro-Yashin, 2012). These analyses do not centre on prefigurative accounts.<sup>11</sup> But what if state actors take up and manifest conceptions of the state as caring, responsible, solidaristic and activist? What can imagining the state in these ways, and acting as if these ways were true ways, do?

Adopting a prefigurative understanding of the state might mean decentring the nation-state as the state's paradigmatic form for other shapes and scales (see also Cooper, 2017, 2019a). It might mean thinking the state against its standard pyramidal form (or at least imagining this verticality differently). Putting such a state account into practice is not mere fantasy. Instances do exist. One involves local councils acting as authorities entitled to advance international agendas and pursue social justice in the face of countervailing national state law and policy. Acting like a state is something local government sometimes does. In Britain, its most recent comprehensive heyday was the 1980s, when urban councils across the country advanced an ambitious left agenda of economic democracy, social justice, environmentalism, decentralisation and democratisation against, and in defiance of, the Thatcher government's political programme of privatisation, conservative familial relations, authoritarian policing, right-wing crime and union laws, and welfare retrenchment (see Boddy & Fudge, 1984; Gyford, 1985; Lansley et al., 1989; Seyd, 1987). A less comprehensive, more recent instance is the (episodic) support shown by councils to Palestine through statements of solidarity, Palestinian flag-waving, municipal visits to the West Bank, and resolutions in favour of the international boycott, divestment and sanctions (BDS) campaign to put pressure on Israel (Cooper & Herman, 2019). The last decade witnessed several UK local authorities passing motions to withdraw contracts and investment. Stirling's motion, passed in 2010, is typical. It

... condemn[ed] the Government of Israel for its continuing illegal occupation of East Jerusalem, the West Bank and the blockade of Gaza. . . . [The] Council therefore resolved to re-assess its current procurement arrangements and ensure future agreements and contracts boycott all Israeli goods. [The] Council also agreed to write to all Scottish Local Authorities, Westminster and Holyrood Governments calling on them to implement an immediate boycott of all Israeli goods. (Stirling Council, 2010)<sup>12</sup>

By arguing for municipal boycotts – here, in support of Palestine – councils express, and to some degree actualise, a challenging imaginary of what it means to be both a state and a local state. This is a conception that places a moral responsibility on municipal government to advance the wellbeing of others, including those at a geographical distance. Responsibility, here, is not contingent on prior wrongdoing but based on an institutional capacity to act in ways that might make a difference. It is also a conception of the state



which recognises state bodies' right to engage in activism, by advocating changes they cannot themselves bring about. In such instances, government is not only the practice of governing, it can also involve promoting a cause, as Leicester city council's boycott motion illustrates.

Leicester is a City renowned for its tolerance, diversity, unity and its strong stance against all forms of discrimination. . . . It is . . . important when there is oppression and injustice, that Leicester City Council takes up a position to support communities experiencing such inequalities and in this instance it is the plight of the Palestinian people.<sup>13</sup>

Municipal participation in BDS enacts a prefigurative conception of the state in which governmental bodies do not form a neat, orderly hierarchy.<sup>14</sup> Different bodies' authority comes from different places and can conflict. In this instance, municipal authority comes from a critical moral injunction to act in ways that alleviate suffering, including among people in another jurisdiction, an authority maintained and rationalised by local government's electoral contract with adult residents. This political account generated objections but, briefly and episodically, it fed a different imaginary of the state, actualised in municipal motions and other activities.<sup>15</sup> This was not an imaginary that denied national laws' capacity to practically constrain what councils could do. As the council minutes detailing the Stirling motion make clear, inhouse legal advice often prompted councils to explicitly place their boycott within the terms permitted by national regulations.<sup>16</sup> At the same time, it poses an imaginary of the state which denies central government its exclusive status as the source of municipal legitimacy. Given the presence of coexisting sources, superordinate institutional rules can be contested, reinterpreted and, on some occasions, trumped (see also Waylen, 2014, p. 216).

Yet, acting *as if* local government can advance foreign policy does not necessarily make it realisable. In this episode, municipal activist state imaginaries confronted those of critics, determined to sustain national government's authority in deciding foreign policy relations and who 'our friends' are.<sup>17</sup> Adopting a conservative hierarchical imaginary of the state, opponents represented local government as little more than a subordinate apparatus properly attuned to local concerns. It was irresponsible and overreaching, then, for councils to use their commercial, investment and procurement powers to interfere in international politics. In 2014, when some British councils flew the Palestinian flag to protest Israel's violence in Gaza, Communities Minister Brandon Lewis described their action as a 'clear political statement on an area of public policy [over] which the municipal body has no responsibility'.<sup>18</sup> This state imaginary was not just expressed in speeches, statements and media interviews. It also drove central government's procurement and pensions' investment guidance,<sup>19</sup> and subsequent litigation.<sup>20</sup>

The prefigurative 'as if' treats the meaning of concepts, such as the state, as able to be stretched and cut in different ways. It opens discussion about what institutions should be like, unsettling common assumptions, for instance, that the state is, or should be envisaged as, the nation-state. By shifting expectations, practices develop in new directions. Because some relevantly-situated actors think the local state *can* properly engage in advancing global justice – that this is a legitimate part of what municipal government can be and do – a course of action is embarked upon. In other words, prefiguration doesn't



just coat existing actions with more progressive meanings. Rather, certain actions happen because of the more progressive meanings (including norms and assumptions) taken up. At the same time, through being taken up and acted upon, new meanings may consolidate. Acting in solidarity with oppressed people at a distance can change accounts of local government's authority and responsibilities – at least for some. But there are also risks in prefiguring the meaning of the state. One is that critical understandings become marginalised. Understanding state bodies in prefigurative ways can seem to deny the state's more disturbing features, naively sanitising an institutional ontology through cultivating excessive faith in what state bodies can accomplish. Institutional sanitisation by the left, when it comes to the state, has not been much in evidence in 21st century Britain, in contrast to the local state imaginaries enacted and circulating through 1980s British municipal socialism (Boddy & Fudge 1984; Lansley et al., 1989). Today, concerns about prefigurative conceptualising, if not expressed in exactly these terms, seem more evident in relation to other institutions, to which I now turn.

My focus is gender.<sup>21</sup> In Britain, what gender means has become bitterly contested as conventional assumptions of two natural and properly complementary social categories, anchored in biology, have been displaced. One emerging view approaches gender as a benign identity – an intimate part of one's being that can take different forms, with no necessary relationship to biological sex.<sup>22</sup> A different view sees gender as an oppressive form of asymmetrical social control. Feminist scholarship, for some decades, has approached gender's oppressive character in ways that also recognise agency, provisionality and intersectional inequalities and differences. However, the women-centred approach to gain prominence within the British public sphere of the late 2010s is rather different. It views gender as socially imposed on reproductively binary, sexed bodies – where one class, men, dominates another class, women (e.g. Jeffreys, 2014). From this perspective, understanding gender as identity dangerously obscures gender's imposed, external, unequal, and far from natural or desirable, constraining force.<sup>23</sup>

Gender as identity and gender as class domination represent two competing paradigms that are rapidly gaining visibility and influence. While other critical accounts of gender endure (and continue to emerge), the alignment of these two accounts with liberal discourses of rights, discrimination, interests and vulnerability, albeit in relation to different subjects, has enhanced their discursive authority. I explore their confrontation in more detail elsewhere (Cooper, 2019b); what I want to explore here is its prefigurative cast. Proponents of both positions act as if the meanings they articulate are true – reflecting what gender really *is*. While, at one level, this is a routine, unsurprising mode of political discourse, what makes it distinctive here is the way state law has become enrolled.

### *Acting as if state law can define what is*

The explicit development of new gender meanings and practices is typically associated with intimate relations, identity-based communities, and counter-publics. What happens when state law, itself, assumes this task? What effects does this have on how social life is understood and lived? The discussion above focused on an officially subordinate state body, UK local government, approaching its role and authority

in subversive ways – acting as if it had the power and right to engage in international solidarity politics. Here, I consider how one officially powerful institution, state law, understands another: namely gender – an institution that is powerful and sometimes official. In my fourth act, I consider a move that would make gender less official. But, for now, my focus is on the move to redefine what gender formally is by moving towards a legal account of gender as a self-determined property of selfhood.

Law composes the truth in many ways. Legislation routinely encodes values, historical presumptions, and normative expectations about social life. As such, it can characterise social arrangements in heavily partisan or ideologically contentious ways, where treating social meanings as if they were otherwise takes up hostile rather than positive understandings, such as the negative legal encoding, in Britain, of gay life as ‘pretended family relationship’,<sup>24</sup> or in the more recent example of a 2019 proposed Kansas Bill on ‘parody marriages’ (see s. 2(e)), which legally defines:

... a variety of so-called marriages that do not involve a man and a woman. . . . The term ‘parody marriage’ refers to so-called marriages between more than two people, persons of the same sex, a person and an animal, or a person and an object.<sup>25</sup>

Alongside group marriages and, somewhat bizarrely, marriages to non-human animals and things, same-sex marriages become legally redefined as ‘parody’, as legislation gets taken up to disparagingly represent life as lawmakers and social movement activists would like it to be *understood*.

State law’s capacity to redefine gender-based practices can also take a less hostile shape. One early 21st century British episode involved government consultations on reforming the Gender Recognition Act (GRA) 2004 to make transitioning simpler. The GRA established the procedure for people to change their legal sex/gender. By the 2010s, concerns that the procedure was cumbersome, pathologising and costly, and increasingly outdated (given light-touch measures emerging elsewhere), precipitated growing demands for reform. In the 2017/18 Scottish government’s consultation on the Act, one question asked was whether moving towards a ‘self-declaration’ approach (para 3.26) should explicitly embrace people who identified as ‘non-binary’ (part 7).<sup>26</sup> While some jurisdictions have moved in this direction (e.g. see Clarke, 2019; Holzer, 2018), British governments’ consideration of a similar move generated intense opposition, particularly from women’s sex-based rights advocates, who argued (among other things) that self-determined gender identity, and law’s recognition of multiple genders, took leave of scientific reality. One organisation, responding to the Scottish consultation, declared,

A man or a woman is not a gender identity but the name for a reproductive sex. . . . A penis is male, a vulva female. . . . Woman = XX Man+XY. . . . *For a government to seek to abolish the common understanding of man and woman . . . cannot be right. It cannot be right to infer that human beings are not sexually dimorphic, that there may be in fact 3 sexes (and why just 3?) without any evidence.*<sup>27</sup>

From this perspective, legal attempts to replace the concept of binary sex with a triad or constellation of self-determined genders was, as another group dismissively put it, to

allow ‘a feeling in your head’ to override ‘the objective reality of bodily sex’; to ‘codify this belief into law’ turned law into ideology.<sup>28</sup>

I return to the politics of this perspective shortly. Yet, the notion that law and the ‘as if’ are antithetical to one another negates a common feature of legal practice. Earlier I referred to Jessica Clarke (2005, p. 563) who describes how ‘de facto performances [can be transformed] into de jure protections’, where acting as if one is an owner or parent can bring such statuses into legal existence. In other cases, through the notion of ‘legal fiction’, law places acts and statuses within legal categories that would seem, in everyday speech, false or improper;<sup>29</sup> a common example being the treatment of corporations as legal persons.<sup>30</sup> It is not because corporations act *like* people that they are legally treated as such. Rather, being treated as a legal person gives corporations access to a controversial set of legal rights and powers.<sup>31</sup> A different legal fiction concerns the status of trans men giving birth, currently defined in British law as ‘mothers’ for birth certificate purposes on the grounds that anyone who gives birth is, by definition, a mother.<sup>32</sup> This is a pragmatic move, bringing those giving birth into a nominal category that socially, and indeed, legally (if they have a Gender Recognition Certificate) they are deemed *not* to properly belong in. While it may have ideological implications, and while it may put pressure on social categories – for instance, by unleashing legal parenthood status (as mother/father) from legal sex (as female/male)<sup>33</sup> – like other legal fictions male motherhood does not seek, at least not explicitly, to make ontological claims (see also Knauer, 2010). But what about legislating ‘new’ understandings, for instance that gender *means* gender identity? This is not presented as prefigurative, since declaring its aspirational and contested status would undermine the solidity of its claim that it reflects what is, and what is already true. And, it is this claim to describe what *is* (true) – definitionally and empirically – that critics fear, on the grounds contested claims will be buttressed and naturalised through state law-making power (see generally Valverde, 2003).<sup>34</sup>

Legislating gender as identity, with only certain gender categories legally available (see Katyal, 2017), takes up, it is suggested, state law’s capacity to discipline and order, so everyone is accounted for and no one or nothing, in Rancière’s terms, is left over. There is male, female and, increasingly, the catch-all residual category ‘non-binary’ for everyone else. The trouble, for many critics, is that this converts a feminist politics – intent on eliminating stereotypical and hierarchical assumptions about male and female – into a gender-right to choose, with a special box now available for those who don’t fit traditional ones (also Holzer, 2018).<sup>35</sup> As Margaret Davies (2008, p. 299) writes: ‘recognising two (or more) “types” of legal subject *may* be less exclusive than simply recognising one, but multiplying the categories of legal subjects may simply multiply zones of exclusion and effectively force people to identify with a particular type’. Jessica Clarke (2015, p. 753) makes a similar point, arguing that state recognition of certain elective genders ‘may pigeonhole liminal, marginal, disruptive, diverse, and dynamic identities into a set of ill-fitting options, or penalize them with nonrecognition’. Beyond the iceberg tip of a new gender category or categories, what also seemingly gains a legal foothold is a notion of gender as denoting an intimate part of personhood. But what follows from this? If state law declares that gender is a core aspect of identity, possibly flexible, and something that comes in three or more shapes, does this then become true?

I do not want to dismiss state law's capacity to forcefully represent and shape life and concepts, 'the determinative power of the state – and its codes – in determining, recognizing, and ultimately administering identity' (Katyal, 2017, p. 411). However, beyond juridical apparatuses and officials' take-up of new legal terms of recognition, state law is prefigurative because (and to the extent that) it *cannot determine* the categories and meanings that *social* life relies upon.<sup>36</sup> State law can certainly 'declare' what gender in general means, the gender categories it recognises, and the mechanisms and evidence it accepts for determining category membership (see also Butler, 2015, pp. 28–29).<sup>37</sup> And these institutional declarations do work – legally, politically and socially – driving various forms of enactment and organisational reform. But the work new legal terms undertake is mediated and overlaid by complex, intricately networked and uncertain processes of realisation as other organisational and community norms mediate, interpret, ignore and resist state law.

The limited ability of law to conclusively establish social facts is apparent in its 'postfigurative' legal character – operating *as if* a past imagined reality still endures. British law, for instance, still assumes *only* men and women exist, despite people claiming and inhabiting other gender identities, and despite communities and organisations recognising other gender identities also. If law cannot sustain an older gender narrative, outside its own most closely controlled arenas and performances, then presumably it cannot impose a new one. New state truths don't roll over social life but mix with it. As Roderick Macdonald writes: 'However formal or informal a legal order, however formal or informal a norm, human action will mould the institutional practices and the prescriptions into a complex normative environment' (2011, p. 321; see also Butler, 2015, pp. 30, 32; Samek, 1977, p. 417). As a result, the social force and effects of state law recognising three or more genders is uncertain. Will it undo the naturalised status accorded to male and female, scoop up and contain those who do not fit, make some lives easier, complicate equality provisions, offer a new status quo for radical gender politics to challenge and extend, or some mix of all of these? What these questions pose is the importance of – if not exactly institutional non-performativity (Ahmed, 2012) – then of something uneven, contested and only partially realised.

Discussion of prefiguration tends to focus on what is achieved. But in some cases, as with state law, prefiguration's value may also lie in its *limited* force to bring about new meanings. Legislative reforms can recognise or represent a social world as if it were otherwise, yet lack the sovereign power to make it so. Recognising the value of a partial performance, or one not fully realised, is not simply about wanting certain reforms to fail (even as we may despair when others remain only 'as if'). What prefiguring here affirms is something else, namely, the value of a more diffuse constellation of power where institutional forces, such as state law, are unable to fully control or determine social meaning. This diffusion is valuable in its own right. It can also be valuable as a way of maintaining tension between what is, what was, and what could be. I return to the question of power's diffusion below in relation to the challenge of institutional recognition. But first I want to introduce two other kinds of prefigurative act. So far, I have considered prefigurative acts by state institutions. The rest of this article changes tack to consider how regular folk might experimentally, and sometimes playfully, prefigure public institutions, including the state.

### *Acting as if secession and the reinvention of currency were possible*

Radically revising the state is not easy – especially in the absence of intensive political power. Yet, interesting and diverse attempts to prefigure the state exist, including through the rehearsal and practice of new national forms. Chiara de Cesari (2012), Fiona McConnell (2016) and Jacob Mundy (2007) have written strikingly about attempts to prefigure Palestine, Tibet and Western Sahara, respectively. These attempts rework, in part, what it means to be a state but, primarily, they are about anticipating and helping to attain nation-statehood through forms of representational enactment. My interest here is with a different kind of prefiguring: role-playing the state and its institutions *with-revisions*, where play captures the creative and strategic pleasures of action that, concertina-like, extends and compresses the space between what is real and what is simulated (or pretend); where what is actualised expresses an imaginary that extends (intentionally or otherwise) beyond what can be realised.<sup>38</sup>

Some kinds of state mimicry seem entirely play; for instance, the simulation of institutional structures, such as mock parliaments or model United Nations, which pedagogically immerse young people in institutional apparatuses to learn how they work (e.g. Dittmer, 2013).<sup>39</sup> As with virtual play worlds, such as the online role-play game *Second Life* (Boellstorff, 2008), these mock institutions do not typically seek to affect or even critique the structures they mimic. I therefore turn to a form of prefigurative play that is more critical and ambitious, drawing on two recent historical examples which evoke the diverging ways state institutions can be prefigured. The first is Frestonia, self-described as a Free Independent Republic,<sup>40</sup> and formed from an eight-acre squatted neighbourhood, around Freston Road, in West London's Shepherds Bush. In 1977, the Greater London Council (GLC) sought to expropriate people's homes to redevelop the area. In response, residents declared secession. They applied to the United Nations for membership, informing them that if the GLC invaded and forced evictions, 'There will exist a crisis with international ramifications, and . . . Frestonia [may] require the U.N. to send a token peace-keeping force'.

Inspired, it seems, by the 1949 Ealing comedy *Passport to Pimlico*,<sup>41</sup> Frestonia fashioned a parodic and playful micro-nation, wittily mimicking the state's most emblematic parts – with passports, postage stamps, visas and ministerial titles. At the same time, its statehood was presented as democratic and egalitarian. Everyone was made a minister, including children, and all took the same surname – Bramley – so (if their state failed) they would have to be rehoused as a single family given GLC policies at the time. For Frestonia was not entirely or simply play. Claiming secession was part of a serious attempt to protect residents from eviction and maintain their community, against industrial redevelopment, and in this they were successful. Yet, their state parody contrasts with a second kind of role-play I want to consider involving local currency networks.

Local Exchange and Trading Schemes (or LETS) developed in British Columbia, Canada in the 1980s before rapidly spreading internationally. In their British heyday of the 1990s, small local currency networks (of 50 to 500 people) developed across the country. LETS functioned as a form of multilateral barter, where people identified their wants and offers – from knitting cardigans to providing gardening, repairs, or transportation – and then performed exchanges using local currency cheques. Unlike Frestonia,

which fashioned a kind of state that was ironic, socially empowering and miniature, *without seriously intending to prefigure the state*, LETS creatively repurposed the state function of making money, refusing to treat money as the state's exclusive preserve (North, 2006; Seyfang, 2001; Williams et al., 2001).<sup>42</sup> We might think of LETS as a counter-institution, refashioning money outside of capitalist norms. Instead of tying money to investment and accumulation, money became encoded as a form of communication and exchange that would support a socially responsible local economy anchored in, and helping to grow, community ties. I originally became interested in LETS through research on everyday utopias (Cooper, 2014), keen to explore what an attempt to perform money differently could accomplish. My own and others' research showed how LETS cultivated exchange relations oriented to sociality, generosity, more equal pricing, sustainability and reuse, with a more relaxed attitude to time and timing. However, the development of a new money form also encountered difficulties. Exchange costs, social awkwardness, timing difficulties, uneven quality, mismatched wants and offers, and lack of participation-energy, led schemes, in Britain, to remain too small and under-utilised to be viable (see also Aldridge & Patterson, 2002; Evans, 2009). Not enough trading happened, and by the turn-of-the-century LETS were increasingly displaced by other, more limited, exchange projects such as time banking.

LETS did not demonstrate prefigurative play as Frestonia and other utopian role-play projects did – with their sometimes satirical, usually exploratory, re-envisioning of institutional renewal. Still, we can read LETS as play in other respects. Performing selling and buying in a reinvented mode of economic exchange, LETS demonstrated the movement and elasticity – the 'play' – in imagining and enacting an alternative economic structure that occasionally *realised* a new form of money. Discussing state law's changing understanding of gender, I suggested one value of institutional prefiguration, if paradoxically, was its inability to fully realise an agenda or intent, for this failure demonstrated the diffuse character of power – uncaptured by any single apparatus. LETS demonstrated the positive character of failure in another way – not as the inability fully to realise a new kind of money, but in the enactment of an ambition that *exceeded* what could be realised.<sup>43</sup> In other words, while British LETS proved unable to bring into being, in their more radical register, a revised 'money-ness' of money, they were able to *represent* their ambition in the procedures and systems they introduced – enacting money as if it could function differently – through listed wants and offers, local cheques, and trading days.

The importance of 'doing' – of actualising or enacting alternative institutional meanings, such as of money – is an important dimension of prefiguration (Maeckelberg, 2011). Materialising change and learning from doing it – 'political pedagogy' in de Smet's (2015) terms – separates prefigurative politics from abstract left theorising. Yet, while much academic work focuses on the learning that ensues from practice, another dimension of material enactment can get glossed over. Because playing-with-revisions involves practice, it affects non-members also; and the recognition they return is central to role-play's effects. Mainstream recognition, however, can prove a mixed bag. In the case of LETS, local council support meant funded development workers and public bodies as scheme members. At the same time, the risk of LETS' earnings being recognised as income for welfare and professional/commercial insurance purposes left many potential participants fearful of becoming involved. Frestonia faced a more ironic form of



recognition. Royal Mail briefly treated the micro-nation as a real one, sending some letters with Frestonia postage stamps overseas.<sup>44</sup> Horace Cutler, then leader of the Greater London Council, also playfully acknowledged its government. On receipt of Frestonia's letter to Geoffrey Howe MP informing him of the new republic, he wrote: 'All I can say is were you not to exist it would be necessary to invent you.'<sup>45</sup>

This kind of ironic recognition can contribute to the enduring *unreality* of state play. While LETS was hindered by state policies that treated its currency (if unevenly) as 'real' money, and so analogous to other kinds of income, politicians' public refusal to treat Frestonia as a constitutional threat, by engaging with it instead as play, consolidated its status as a cheeky form of 'let's pretend'. But recognition does not just operate as a bridging or 'roping' structure, pulling fictive or play-worlds (however understood by the mainstream) into an official reality. It is also a way of expanding the 'minor-stream' worlds lived (in) *as if they were real* through the recognition that prefigurative initiatives grant each other.<sup>46</sup> Does this, then, mean prefigurative play gives rise to two discrete and separate processes – a mocking or destructive recognition from elite forces and a valorising recognition from grass-roots ones? I want to complicate this division in my fourth prefigurative act.

### *Acting as if a more radical proposal was already on the law reform table*

Earlier, I discussed the controversy over reforming state law to treat gender as an elective identity. In this final example, I want to approach prefigurative law reform from a different angle and ask: what value is there in a research project acting as if more radical proposals around gender were on the law reform table?<sup>47</sup> In their 2017/18 consultation on reforming the Gender Recognition Act, policy-makers in both Scotland and England and Wales solicited public views on how and whether to make gender transitioning easier and less pathologising. Questions posed included: how many transitions can someone have; to what genders; at what age; and through what means?<sup>48</sup> Yet, a more fundamental question remained unasked, even as it became tacitly invoked by the move towards self-determination and the growing gender-neutrality of statutory law: Are there good reasons for people to continue to be legally gendered, issuing from the sex registered at birth? This 'decertification' question (Cooper & Renz, 2016) is at the heart of a three-year collaborative research project on the Future of Legal Gender (FLaG).<sup>49</sup>

In Britain, different social relations structure people's lives, as they also structure the law, but many – including ethnicity, sexuality and religion – do not give rise to a legally assigned personal status, for instance as gay or Jewish. In contrast, the formal legal status accorded sex/gender places people within defined categories and obliges them to undergo official procedures for their status to change. Legal gender status doesn't just affect those who need to transition or who object to the category they are placed within. The symbolic importance which the law attaches to a binary structure, in requiring birth-sex to be registered, suggests that sex – lived socially as gender – marks a distinction that is human-shaped and that matters. This is not just a critical mattering; it is also a normative claim about who and what we are (see Cooper & Emerton, 2020). But what alternative arrangements are possible? And can a prefigurative law reform project help to anticipate and establish pathways for reform? We might think of prefiguration here as having two



dimensions. The first centres on process, and the challenge of undertaking a mock law reform project in collaborative, critically reflexive ways (see also Macdonald & Kong, 2006, p. 27). The second, which I want to consider, involves taking a radical proposal, not currently on the law reform table, and acting as if it was already under review, and so accelerating its detailed consideration (if not its enactment). De Smet's (2015) discussion of Vygotsky and 'proleptic learning' is useful here. Proleptic learning involves 'anticipat[ing] or imagin[ing] competence through the representation of a future act or development as already existing' (de Smet, 2015, p. 91). A prefigurative law reform project comes to understand the implications of legal change by acting as if the questions and choices at stake were reasonable to attend to in the present. But does this assume that what we learn today about future possible changes to legal gender status will retain their value? In the case of law reform, the life expectancy of imagined consequences can be brief as conditions change, lessening the benefits of earlier rehearsal. I therefore want to consider the value of prefigurative law reform as an intervention in the present (rather than an effective managing of the future), and to address the significance of the 'as if' in this process.

The Future of Legal Gender (FLaG) did not represent itself as an advocacy project. Its aim was not to argue *for* a new legal agenda; that 'decertification' – understood as the withdrawal of state-assigned gender status – should be introduced. But does acting as if this proposal was already on the law reform table, in effect, put it there? FLaG certainly lacked the authorising conditions to render its proposal officially performative (cf. Law & Urry, 2004). It could not work in illocutionary ways by requiring or ensuring decertification was given consideration by state bodies, even as it might contribute to the emergence of a more official proposal in the future (although a backlash could cause it to have the reverse effect). Yet, regardless of whether decertification emerges as a 'real' legal proposal, as an *imagined* measure, that also constituted an emergent methodology for doing socio-legal research, decertification was saturated with belief that it could act. For our part, we hoped its exploration through interviews, seminars and other forms of public engagement would offer, in the current fraught scene, a more exploratory, less judgemental space for gender's consideration, one that could incorporate some marginalised perspectives, cleavages and questions. With politically lower stakes, looser attachments, and the inevitable temporal space between now and any future-present of the law reforms proposed, more flexible and plural conceptualisations of gender might also be possible, away from the rigid monolithic definitions – that *this* is what sex or gender *really means*, for example.

The value of a prefigurative law reform project, then, is not just, or even principally, about preparing (for) the future but about alternative discursive lines in the now. Yet, this may suggest prefigurative law reform projects can insulate themselves and so provide participants with a politically constructive, 'safe' refuge away from the 'real world' fray. Law reform projects, however – including this one – are not that insulated; and this is a source of both difficulty and challenge. If proposals are seen – or can be depicted – as 'real' law-making, or if they get presented as the scary place that moderate-sounding legal measures will inevitably lead to, this can intensify divisions and anxieties, undermining the capacity of a prefigurative law reform project to enact an exploratory deliberative space. While it is the credible appearance of prefigurative law reform proposals

which incites serious attention, for such attention to remain focused on the merits (or otherwise) of the reform rather than on (challenging) its realisation, the ‘as if’ simulated character of the proposal needs to be explicitly sustained.

## Conclusion

Prefiguration is sometimes dismissed as a minor form of politics – too small-scale and marginal, too invested in its own purity, voluntary action, and dream-world to be a politics that matters or that adds much given the tremendous contemporary crises that we face. But without romanticising prefigurative politics or suggesting it is the only politics worth pursuing, this discussion works from the assumption that prefiguration remains important, including – and, perhaps, especially – at times of political despair when much needed “transfers of power” seem out of reach. This article has sought to contribute to prefigurative thinking by focusing on institutions in conjunction with a specific form of prefiguration, attuned to the ‘as if’. Drawing on research I have carried out, including collaboratively, over two decades, it draws together four very different kinds of prefigurative activity: (1) where local government acts as if it has authority to engage in international policy-making and global solidarity despite countervailing national government policies, authority and alliances; (2) where state law acts as if it has the authority to establish gender’s terms and categories, including by changing understandings of gender’s meaning in the process; (3) where grass-roots communities act as if they have the power and right to remake institutions of money and state; and (4) where researchers act as if a different, more radical proposal was already on the law reform table, and so deserving of serious consideration.

At the heart of this discussion lies the question: what do such initiatives create; and what does reading them as prefigurative make visible? Typically, work on prefigurative politics and counter-institutions foregrounds three features: learning, practising and showcasing. This article has considered how prefiguring institutions innovates, energises, stimulates, anticipates, hurries and normalises. However, in understanding what prefiguring does, this article has also foregrounded a different, less attended-to aspect, namely how prefiguring institutions mediates, reconstitutes and troubles the interrelationship of the real to the imaginary (recognising the imaginary is also, in its own sense, real; cf. Bottici, 2014). This relationship comes to the fore in the authorising conditions that prefiguration relies upon, and the work recognition does (and doesn’t) do, within diffuse and unequal circuits of power.

A central paradox of prefiguration is that it takes the meanings, conditions and legitimacy it seeks as if they already existed. In a sense, we might describe it as a form of retro-figuring, reliant on imagined antecedents that authorise, for instance, councils’ engagement in foreign policy and street squatters’ state secession. For while *prefiguration* takes up future-oriented aspirations as enactable present-day practices and norms, it also relies on this future as already in place to authorise the actions it undertakes. This can be read as an imagined form of backfilling undertaken playfully or seriously. But this backfilling can also prove performative – retrospectively creating the authorising conditions relied upon. Local government’s legitimate capacity to engage in international policymaking, for instance, is not predetermined. However, while municipalities may act as

if they have authority – putting permissions or entitlements in place *by treating them as if they were already there* – whether this proves successful depends on what councils and the network of actors, who support, thwart or otherwise affect council actions, also do.

Acting as if the necessary conditions are already in place, particularly when undertaken seriously, can be challenged. But the challenging (and other) effects of intervening bodies also structures forward-oriented conditions of accomplishment, and one important process here is how recognition happens. The prefigurative acts discussed are not siloes. Their existence, effects and force are mediated by mainstream institutions along with other bodies, and this mediation also shapes how and whether institutional prefiguration is recognised as ‘real’ (and so not read in the terms of the ‘as if’). For while prefiguration can involve deliberately reaching beyond what can be accomplished, it can also be a way of reading initiatives and reforms that receive insufficient recognition to be realised, and which lack the force to bring such recognition into effect. At the same time, recognition as real is far from uncomplicatedly positive. Initiatives may be framed as ‘wrongly real’, and so subject to criticism and attack as municipal boycotts and legislative consultation on recognising a third gender experienced. Recognition as real-like may also carry costs as local currencies encountered, shoe-horned into a restrictive and penal wider welfare culture. In such conditions, it may seem as if explicit recognition as ‘not-real’ is preferable – where simulations are authorised and validated as imaginative ventures not intended to pass. Approaching initiatives in this way might prefigure a more *explicitly* experimental and playful politics. While Frestonia shows how recognition as play can trivialise and dismiss, it can also protect initiatives by diminishing their threat. Instead of being denounced as grievous or seditious, initiatives become forms of invention, art, or recreation, occupying a separate, bounded play-world in which their claims can stand. But what happens when the tacit contract is broken, and prefigurative play seeps out?

It is tempting to suggest that prefiguring institutions needs to come out either on the side of fictive play or on the side of an ambition to be recognised as real. However, at its heart, prefiguration – whether as a political orientation, specific form of practice, or register of understanding – involves the complex relationship between the imaginary, the fictive and the real. At one level, acting *as if* things were otherwise invokes a conscious distinction between the real and the fictive – where the imaginary is juxtaposed against what is realised as true. At another level, acting ‘as if’ undoes the distinction as actions based on counterhegemonic understandings and norms change what is (and what is becoming). But prefiguration also embodies something else, and that is the coexisting, overlapping, multiplicity of institutional worlds. Prefiguration undercuts the notion of institutional life as a clear, zero-sum, singular plane (or world). This is not simply because partially-recognised and minor counter-institutions exist alongside dominant ones, communicating, effecting and interacting with them (although this indeed occurs). It is also because what institutions *are* depends on the facts, legitimacy, roles, authority and functions underpinning and expressed by them, and these different dimensions are frequently in dispute. Acts that are anchored in different normative and epistemic beliefs produce different definitions and accounts of the acts. LETS, for instance, both was and wasn’t money; municipal engagement in BDS both was and wasn’t authoritative state action. This

multiplicity is more than simply disagreement or different views about what is happening. Since imaginaries of authority, role, function and legitimacy (among others) help make institutions up, *it is also, importantly, about different happenings* (see also Law & Urry, 2004, p. 397). Prefiguration unsettles political certainty when it comes to what institutions are and what they do. While this creates risks, it also creates hope.

### Author note

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### Notes

1. For a concise critique of an anti-institutionalist politics, described as a ‘single track understanding of democratic politics’, see Fraser (2013).
2. For a useful account of the gendered character of institutions that focuses on rules, see Lowndes (2019).
3. For instance, it has been taken up in exploring scientific and other academic knowledge, e.g. see Fine (1993), Hay (2014).
4. By ‘new’, I mean new for governments rather than for the social constituencies concerned.
5. For discussion of local government and other ‘subnational’ governmental bodies’ involvement in foreign affairs and international politics, see for instance Clarke (2010), Hobbs (1994), Hocking (1993) and Tatham (2013).
6. <https://blogs.lse.ac.uk/constitutionuk/>
7. I am grateful to Margaret Davies for making this point.
8. In some cases, formal authority may appear to be present, as when state law recognises new genders. However, what gets depicted, by critics, in such circumstances as missing is scientific agreement. In its absence, governments are deemed to lack the right to ‘create’ facts as I explore further below.
9. Discussing this in a legal context, Margaret Davies (2008, p. 286) describes how ‘legal actors make the vertical account of law true by presuming it to be so and acting in accordance with this presumption’.
10. I explore these themes further in Cooper (2019a).
11. For other work that seeks to reimagine the state, see Newman and Clarke (2014) and Newman (2020).
12. Stirling Council, Council Minutes, 13 December 2010; <http://minutes.stirling.gov.uk/pdfs/scouncil/minutes/SC20101213.pdf>
13. *R (JHRW and Neumann) v. Leicester City Council and others* [2018] EWCA Civ 1551.
14. Domestic state identities also depend on how international bodies respond.

15. Councils focused on opposing Israeli policy in ways that prefigured their role and authority. Far less evident was a prefigurative ‘as if’ in terms of councils treating Israel/Palestine as if the jurisdictions resembled the political geography that was sought-after or desired. My thanks to David Seymour for this interesting suggestion.
16. Stirling Council, Council Minutes, 13 December 2010; <http://minutes.stirling.gov.uk/pdfs/scouncil/minutes/SC20101213.pdf>
17. See comments following Bradford Council’s decision to fly the Palestinian flag from City Hall in response to Israel’s actions in Gaza, ‘Bradford Council accused of taking sides over Gaza in flag row’, *Yorkshire Voice*, 28 July 2014; [www.yorkshire-voice.com/palesti/](http://www.yorkshire-voice.com/palesti/)
18. ‘Tower Hamlets mayor raises Palestinian flag over town hall’, *BBC News*, 31 July 2014; [www.bbc.co.uk/news/uk-england-london-28580023](http://www.bbc.co.uk/news/uk-england-london-28580023)
19. 17 February 2016; [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500811/PPN\\_on\\_wider\\_international\\_obligations.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500811/PPN_on_wider_international_obligations.pdf)
20. See *R (Palestine Solidarity Campaign) v. Secretary of State for Communities and Local Government* [2018] EWCA Civ 1284; *R (JHRW and Neumann) v. Leicester City Council and others* [2018] EWCA Civ 1551.
21. For a useful discussion of gender as an institution, see Martin (2004).
22. See for instance the Yogyakarta principles, setting out aspirational international human rights principles on gender identity and expression. The original principles were set out in 2006, further principles were adopted in 2017; <https://yogyakartaprinciples.org/>
23. See for instance Response from Women’s Spaces in Scotland, submitted to Scottish consultation on the GRA; [www.gov.scot/Resource/0053/00539506.pdf](http://www.gov.scot/Resource/0053/00539506.pdf)
24. See s. 28 Local Government Act 1988, now repealed.
25. House Bill no. 2320, Session of 2019.
26. Scottish Government, *Review of the Gender Recognition Act 2004 – A Consultation*; [https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/user\\_uploads/set1017251758-1\\_gender\\_p4-3-.pdf](https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/user_uploads/set1017251758-1_gender_p4-3-.pdf)
27. Women’s Spaces in Scotland response to Scottish consultation on reforming the Gender Recognition Act 2004, emphasis added.
28. See Fair Play for Women, ‘Guide to the Scottish Consultation on Reform of the Gender Recognition Act’; <https://fairplayforwomen.com/scotland/>. See also Kay Green, ‘Time for socialists to take action against gender stereotyping’, *Morning Star*, 17 October 2019 <https://morningstaronline.co.uk/article/f/time-socialists-take-action-against-gender-stereotyping>.
29. ‘Legal fiction’ can be interpreted in different ways, e.g. see Fuller (1930), Knauer (2010) and Petroski (2013). In one sense, it suggests law and social life operate through different epistemological registers, such that all legal categories are social fictions; and, thus, not *legal* fictions at all but rather legal truths. Alternatively, it suggests that apart from limited exceptions, the expectation is that legal discourse corresponds to social reality (as it is or should be).
30. On corporate personhood as something that exceeds and is irreducible to its legal form, see Bashkow (2014).
31. To see it as a legal fiction, however, also assumes legal persons are analogous to *human* persons; for critical engagement in relation to rivers as legal persons, see Clark et al. (2018); and see Mussawir and Parsley (2017) for a critical reading of contemporary elisions between human and legal personhood.
32. This was affirmed in *R (on the application of TT) v. Registrar General for England and Wales and Others* [2019] EWHC 2384 (Fam).
33. *R (on the application of TT) v. Registrar General for England and Wales and Others* [2019] EWHC 2384 (Fam), paras 279, 280.

34. As one critic has written, 'It pins everyone to the idea of innate gender characteristics, so if it gets into legislation, we get courts enforcing a sexist ideology. That is the end of freedom of speech and belief'; Kay Green, 'Time for socialists to take action against gender stereotyping', *Morning Star*, 17 October 2019; <https://morningstaronline.co.uk/article/f/time-socialists-take-action-against-gender-stereotyping>
35. Although see also Macdonald (2011) on giving too much weight to the written word of state law as a form of 'contemporary legal evangelicalism'.
36. See Bailey (2008, p. 588) for a useful discussion of the state's place in 'political struggle [that] pits symbolic powers against one another, each trying to define the legitimate vision of the social world' and 'to make their visions and divisions of the social world "stick"'. Using Bourdieu, Bailey (2008) addresses how the state's symbolic power is structured by the competing symbolic power of other forces and bodies.
37. Opponents of legal recognition for non-binary genders argue it treats a 'fictive' gender as real. While their opposition targets the claims about gender being made, the 'as if' quality of legal action can be read differently – not as targeting the authenticity of certain genders but of institutional capacity – in state law acting as if *its* recognition has a gender-declarative or confirmatory power.
38. I explore this further in Cooper (2019a, Ch. 4, 6).
39. For a different approach, where children use play prefiguratively, acting (through play) as if they have a right to urban spaces, and prefiguring a different, more child-friendly approach to the city, see Carroll et al. (2019).
40. The Republic of Frestonia archive; <http://www.frestonia.org/>
41. See J. Harris, 'Freedom for Frestonia: the London commune that cut loose from the UK', *The Guardian*, 30 October 2017; [www.theguardian.com/cities/2017/oct/30/frestonia-london-commune-squatters](http://www.theguardian.com/cities/2017/oct/30/frestonia-london-commune-squatters)
42. As such, they parallel another counter-institutional form, People's Tribunals, which assume responsibilities and powers, usually associated with states, to hold bodies to account, in order to bring corporate and state harms to light and identify forms of accountability and redress; see Borowiak (2008) and Simm and Byrnes (2014).
43. I explore this further in Cooper (2019a).
44. Other mail was impounded; see [www.frestonia.org/frestonian-postage-stamps/](http://www.frestonia.org/frestonian-postage-stamps/)
45. See letter from Horace Cutler, 25 July 1978; [www.frestonia.org/response-from-horace-cutler-leader-of-the-glc/](http://www.frestonia.org/response-from-horace-cutler-leader-of-the-glc/)
46. This may prove a limited recognition given the scanty powers grass-roots bodies typically marshal. Role-played institutions may be hailed by grass-roots bodies according to their self-determined name and identity but the structural relations and connections that give recognition the power to make a difference may be missing. While power is diffuse, emergent and not fully delimited, it is, of course, very far from evenly exercised, created or held.
47. On the performativity of scholarship, see Law and Urry (2004); and on prefigurative theory, see Davies (2017, p. 17).
48. See, for instance, Scottish Government Review of the Gender Recognition Act 2004 – Consultation.
49. The project was funded by the Economic and Social Research Council from 2018-2021. Alongside myself, Emily Grabham, Elizabeth Peel and Flora Renz were co-investigators, and Robyn Emerton and Han Newman project researchers; see <https://futureoflegalgender.kcl.ac.uk/>

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